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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,428	08/04/2006	Hiroshi Nagai	SHOBA6.001APC	9228
20995 7590 07/14/2009 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER PERREIRA, MELISSA JEAN				
ART UNIT		PAPER NUMBER		
1618				
NOTIFICATION DATE		DELIVERY MODE		
07/14/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com
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**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/588,428

Applicant(s)

NAGAI ET AL.

Examiner

MELISSA PERREIRA

Art Unit

1618

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 July 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1, 2 and 5-7.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Michael G. Hartley/
Supervisory Patent Examiner, Art Unit 1618

/Melissa Perreira/
Examiner, Art Unit 1618

Claims 1,2 and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zeyuan et al. (J. Argic. Food Chem. 1998, 46, 3875-3878) and Xia (CN1435125; derwent Acc No 2004-023802) in view of Suzuki et al. (J. Argic. Food Chem. 2000, 48, 5649-5653) and in further view of Iwasaki et al. (US 7,014,876B2).

Applicant asserts that Zeyuan et al. and Xia do not disclose or suggest anything about methylated catechins. In fact, the results reported in Zeyuan et al. actually support the patentability of the claimed invention as it reports that a TG-lowering effect of black tea, albeit a lesser effect than that of the particular green tea studied.

Zeyuan et al. and Xia teach of reducing and examining blood triglyceride levels in a subject via the administration of black tea extracts/functional beverage and oolong tea respectively. Therefore it would have been obvious to one ordinarily skilled in the art that black tea and oolong tea are useful for lowering triglyceride levels. Zeyuan et al. teaches that triglycerides were significantly reduces by 33.3% in green tea and 25.0% in black tea.

Applicant asserts that Xia does not suggest that green teas high in methylated catechins, including the recited tea varieties, should be selected in particular to lower TG levels.

Xia was used to teach that oolong tea is used to lower TG levels. Suzuki et al. (J. Argic. Food Chem. 2000, 48, 5649-5653) was used to teach that O-methylated catechin derivatives, such as (-)- epigallocatechin-3-O-(3-O-methyl) gallate (EGCG3"Me) is extracted from the tea leaves of Tong ting oolong tea, Benihomare cultivar (black tea), etc. and that the O-methylated catechin derivative EGCG3"Me and (-)- epigallocatechin-3-O-gallate (EGCG) have analogous properties. Therefore it would have been obvious to one skilled in the art to substitute any of the catechin derivatives extracted from oolong tea for lowering TG levels.

Applicant asserts that Iwasaki et al. teaches an amount of catechin contained in oolong tea but does not disclose anything about effective amounts of methylated catechins for reducing triglyceride levels.

Iwasaki et al. teaches that the catechins found in Oolong tea are used in the healthy drink in an amount from 0.092 to 0.5 g per 100 ml while Xia teaches that health foods prepared from oolong tea is able to reduce triglycerides. Therefore it would have been obvious to one skilled in the art to utilize oolong tea extracts in a health food (not excluding a drink) in the amounts of Iwasaki et al. to reduce triglycerides.